

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-02-PA-280
Statcom Communications Corporation	)	
	)	NAL/Acct. No. 200332400007
Staten Island, New York	)	
	)	FRN: 0005-1410-72
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 24, 2007****Released: January 26, 2007**

By the Assistant Bureau Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we dismiss the Petition for Reconsideration filed by Statcom Communications Corporation (“Statcom”). Statcom seeks reconsideration of the *Forfeiture Order*<sup>1</sup> in which the Enforcement Bureau (“Bureau”) found it liable for a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) for willful and repeated violation of Section 1.903(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violation involves Statcom’s operation of two trunked radio systems at an unauthorized location and operation on an unauthorized frequency, 462.075 MHz.

**II. BACKGROUND**

2. On July 30 and 31, 2002, responding to a complaint of operation at an unauthorized location in Staten Island, New York, agents from the Commission’s Philadelphia, Pennsylvania Office (“Philadelphia Office”) and its New York, New York Field Office inspected a single trunked radio system and observed unauthorized operation on the frequencies 477.8125 MHz, 462.450 MHz, 461.450 MHz, 478.0875 MHz, 472.5125 MHz, 461.825 MHz, 462.025 MHz, 461.775 MHz, 461.475 MHz and 462.075 MHz (“the frequencies”) at 700 Victory Boulevard, Staten Island, New York (“Parkview House site”). The agents determined that the radio system was operated by Statcom.

3. The agents’ search of Commission records indicated Statcom had been issued authorizations for operation of two trunked radio systems on Staten Island, New York at 10 Highpoint Road,<sup>3</sup> (“Todt Hill site”) and 631 Howard Avenue,<sup>4</sup> (“Wagner College site”), but it had not been issued an authorization for operation at the Parkview House site. A search of Commission records also revealed

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<sup>1</sup> *Statcom Communications Corp.*, 20 FCC Rcd 1550 (Enf. Bur. 2005) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. § 1.903(a).

<sup>3</sup> Statcom was authorized to operate stations WIL718 (477.8125 MHz), WPPH856 (462.450 MHz), KNEW768 (461.450 MHz), WIL766 (478.0875 MHz and 472.5125 MHz), and WNIH640 (461.825 MHz) at the Todt Hill site.

<sup>4</sup> Statcom was authorized to operate station WPUD412 on 462.025 MHz, 461.775 MHz and 461.475 MHz at the Wagner College site.

that Statcom had no authority to operate on 462.075 MHz at any location.

4. On August 5, 2002, the Philadelphia Office issued a *Notice of Violation* (“*NOV*”) to Statcom for violating Section 1.903(a) of the Rules by operating two trunked systems at the Parkview House site, an unauthorized location, and operating on frequency 462.075 MHz, an unauthorized frequency. Statcom filed a timely response to the *NOV*, and supplemented its response with further material pertaining to its use of 462.075 MHz from the authorized licensee. In response to the *NOV*, Statcom explained that after it lost its location on the World Trade Center when the building was destroyed, it had modified its license several times in an effort to find adequate coverage for its customers, but that in the process of solving interference problems at the Victory Blvd. location, it overlooked modifying its license for that site.

5. On January 27, 2003, the Philadelphia Office issued a *Notice of Apparent Liability* for \$12,000 to Statcom for operating a radio station without Commission authorization for the location and for operation on an unauthorized frequency in apparent willful and repeated violation of Section 1.903(a) of the Rules.<sup>5</sup> Statcom filed a timely response. In its response, Statcom requested that the *NAL* be cancelled because the apparent violations were inadvertent and not willful in nature, and would not have occurred in any event but for the events of September 11, 2001 (“9/11”), which forced Statcom from its transmission location on the World Trade Center. Statcom states it believed in good faith that the contractor it employed to address Commission licensing for a new location had acquired Special Temporary Authority. Statcom further argued that it lost significant investment that was not entirely reimbursed through recovery grants, and that its revenues were greatly reduced and were insufficient to sustain the loss of an additional \$12,000.

6. On January 26, 2005, the Bureau issued a *Forfeiture Order* finding Statcom liable for a monetary forfeiture in the amount of \$12,000 for willful and repeated violation of Section 1.903(a) of the Rules. In so finding, the Bureau stated that “Statcom’s operation on the various frequencies from an unauthorized location more than a year after 9/11 does not mitigate its violation....” The Bureau also found that Statcom’s request for cancellation of the forfeiture due to financial distress was not accompanied by any documentation for the years 1999 through 2001, as is required for a request of reduction based on inability to pay. On March 10, 2005, Statcom filed a Petition for Reconsideration, a Request for Waiver of the 30-day time period in which to file a petition for reconsideration, and information in support of its request for reconsideration based upon its inability to pay. In its petition for waiver, Statcom states that the delay in filing its petition for reconsideration resulted from Statcom’s inability to retrieve its Federal income tax records from storage in sufficient time to meet the 30-day petition for reconsideration period.

### III. DISCUSSION

7. Section 405 of the Communications Act of 1934, as amended (“Act”),<sup>6</sup> requires that petitions for reconsideration of a Commission action or an action by delegated authority must be filed no later than 30 days after the action that is the subject of the appeal.<sup>7</sup> Section 1.106(f) of the Rules,<sup>8</sup> which requires petitions for reconsideration to be filed within 30 days of the date of the public notice of the

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<sup>5</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332400007 (Enf. Bur., Philadelphia Office, released January 27, 2003).

<sup>6</sup> 47 U.S.C. § 405(a).

<sup>7</sup> Documents are considered to be filed on the date of receipt at the location designated by the Commission. 47 C.F.R. § 1.7.

<sup>8</sup> 47 C.F.R. § 1.106(f).

final order, reflects that statutory mandate.<sup>9</sup> Statcom filed its appeal of the *Forfeiture Order* forty-three days after January 27, 2005, the first full day following public notice of the *Forfeiture Order*. The 30<sup>th</sup> day after the first full day following public notice of the *Forfeiture Order* was February 25, 2005; under the terms of Section 405 of the Act and Section 1.106(f) of the Rules, Statcom had until close of business that day to file an appeal.

8. “Because the time period for filing petitions for reconsideration is prescribed by statute, the Commission may not, with one narrow exception, waive or extend the filing period.”<sup>10</sup> The United States Court of Appeals for the D.C. Circuit created a single, narrow exception to the statutory filing period, and permits the Commission to waive or extend the filing period where the late filing is due to the Commission’s failure to give a party timely notice of the action for which reconsideration is sought.<sup>11</sup> The very limited conditions under which a waiver or extension of the statutory time limitation may be granted are not present in this case as Statcom’s stated reason for the late filing of its petition (delay in filing its petition for reconsideration resulted from Statcom’s inability to timely retrieve its Federal income tax records from storage) does not fall within this narrow exception. Accordingly, pursuant to the Act and relevant case law, the Commission had no jurisdiction to consider Statcom’s petition for reconsideration after February 25, 2005, and we must therefore deny Statcom’s waiver request and dismiss its petition for reconsideration.<sup>12</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(b) of the Act, and Section 1.106(f) of the Rules,<sup>13</sup> the petition for waiver filed by Statcom Communications Corporation **IS DENIED**, and the petition for reconsideration filed by Statcom Communications Corporation **IS DISMISSED**.

10. Payment of the forfeiture assessed by the *Order* shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>14</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

<sup>9</sup> Section 1.4(b) of the Rules specifies that the first full day after the date of public notice counts as day 1 for the purpose of calculating the filing deadline. In this case, calculating the 30-day filing deadline from a public notice date of January 26, 2005, begins with January 27, 2005 as the first of the permitted 30 days.

<sup>10</sup> *Stephen E. Powell*, 11 FCC Rcd 11925, 11926 (1996) (citing to *Reuters, Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986)).

<sup>11</sup> *Gardner v. FCC*, 530 F.2d 1086, 1090-91 (D.C. Cir. 1976).

<sup>12</sup> See, e.g., *In the Matter of 62 Applications for Authority To Construct and Operate Multipoint Distribution Service Stations at 24 Transmitter Sites*, 10 FCC Rcd 11,178 (1995); *Jesse C. Ross and Ernestine A. Ross*, 21 FCC Rcd 7913 (Enf. Bur.2006).

<sup>13</sup> 47 C.F.R. § 1.106(f).

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Statcom Communications Corporation, 1324 Forest Avenue, Staten Island, NY 10302, and to their counsel, Frederick J. Day, Esq., 5673 Columbia Pike, Suite 100, Falls Church, VA 22041.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Bureau Chief, Enforcement Bureau